IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.995 OF 1994

Shri Sarveshwar s/o
Vishnupant Joshi
aged 29 yrs, Occ.Nil
r/w House No.4-13-76,
Nageshwarwadi,
Aurangabad .. Petitioner.

Vs.

1. The Chief Justice,
Bombay High Court
Bombay 400 032. ..

2. The Registrar,
Appellate Side,
Bombay High Court,
Bombay 400 032. ..

3. The District and Sessions
Judge,
Jalna .. Respondents.

Mr.R.M.Agarwal with Ms.S.A.Ghaisas with
Mr.S.B.Talekar and Mr.B.B.Dandwate for the
petitioner.

Mrs.S.S.Bhende AGP for respondent nos.1 to 3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : MARCH 23, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE, J.)

. In this petition filed under Article 226 of the Constitution, the petitioner has assailed the order of dismissal passed by the learned District and Sessions Judge, Jalna in his capacity as Disciplinary authority on 16.1.1985 under Rule 9(4)

of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short "Discipline and Appeal Rules"). The petitioner was initially employed as writer in the English Section in the Court of Civil Judge, Junior Division and Judicial Magistrate, First Class from 6.5.1981. and subsequently at some point of time towards the end of his tenure he was attached to the Court of Civil Judge, Senior Division, Jalna as bailiff. During the course of his employment, he was issued two separate charge-sheets, the first one being dated 7.6.1984 and the second one being dated 8.6.1984. In the first charge-sheet five charges were levelled regarding dereliction of duties, not maintaining diary, remaining absent on 14.7.1985 and thereby affecting the work of liabrary, failure to complete work between 9.7.1983 to 12.7.1983 and receiving the amount of Rs.20/- towards copying fees on 11.8.1983 in R.C.S.No.178/1980 from one Udhavrao Nangre but failed to issue the receipt. Subsequently, in the second charge sheet it was alleged that the petitioner had avoided to execute attachment warrant and obtained the signature of the decree holder without disclosing the contents thereof and it was found that it was a receipt for payment of the decreetal amount.

2. Two separate enquiries were held i.e. deparment enquiry Nos.1/1984 and 2/1984 by the said enquiry officer, who was one of the Judicial Officers. On completion of the said enquiry, separate enquiry reports were submitted on 19.11.1984 by the enquiry officer to the Disciplinary Authority and, therefore, two show cause notices dated 23.11.1984 were issued against the petitioner calling upon him to submit his explanation/representation within 15 days as to why punishment under Rule 9 should not be imposed. The petitioner submitted joint reply on 7.12.1984. Thereafter the Disciplinary Authority had considered the evidence recorded by the Enquiry Officer in his reports which were made available to him alongwith the show cause notices. The defence submitted by the petitioner was considered by the Disciplinary Authority, who was satisfied that the charges were duly proved. The charges were of serious nature and the punishment of dismissal from service with disqualification of future employment in the Government was justified. Accordingly, the impugned dismissal order came to be issued by the learned District and Sessions Judge, Jalna. The petitioner preferred two separate appeals on 4.4.1985 and by communication dated 13.12.1985 the Additional Registrar of this Court informed the

petitioner that both these appeals were decided by the High Court and the decision was communicated to the District and Sessions Judge. Consequently the Registrar of the District Court at Jalna has by his communication dated 13.3.1985 informed that his appeals were rejected by the High Court (on administrative side).

3. Mr.R.M.Agarwal, learned counsel for the petitioner has reiterated the grounds set out in the petition memo against the impugned order of the trial Court. We need not deal with all the grounds so raised because in our considered opinion the appeal succeeds on ground No.IV itself. It has been stated that the appellate authority did not offer opportunity of personal hearing to the petitioner and no reasons have been set out by the appellate authority while rejecting both the appeals. This is in violation of Rule 23(2) of the (Disciplinary and Appeal) Rules, 1979 and the principles of natural justice. In support of this arguments the learned counsel placed reliance on the Full Bench judgment of this Court in **Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad and Anr. 2002(3) Mh.L.J. 750** wherein the Full Bench held that (a) the personal hearing by the appellate authority was required to be given to the

delinquent officer and (b) the appellate authority is required to set out the reasons in the order deciding the appeals filed against the order of punishment passed under Rule 23(2) of the Discipline & Appeal Rules. The law laid down by the Full Bench of this court in case of **Anil Amrut Atare (supra)** is squarely applicable in the instant case and we have noted that the appellate authority had not heard the petitioner while rejecting both of his appeals and a reasoned order rejecting those appeals was not communicated to him. The petitioner was merely informed that his appeals were rejected. The petition, therefore, succeeds partly on this count alone and the petitioner's appeals filed separately will have to be heard afresh by affording him an opportunity of personal hearing and decided the same as per law laid down by the Full Bench.

4. In the premises, this petition succeeds partly. The order dismissing the appeals, filed by the petitioner, is hereby quashed and set aside and both these appeals are restored to file. The Registrar General is hereby directed to place both the appeals submitted by the petitioner on 4.4.1985 before the appellate authority nominated by the Hon'ble Chief Justice for denovo hearing and

decision as per the law laid down in **Anil Atre's case (supra)**. The Registrar General is further directed to place the appeals before the appellate authority within a period of four weeks from today.

5. Rule is made absolute in terms of the above directions but without any order as to costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE, J.)**